CLERK'S COPY.

2147 76
V 35 L

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 885

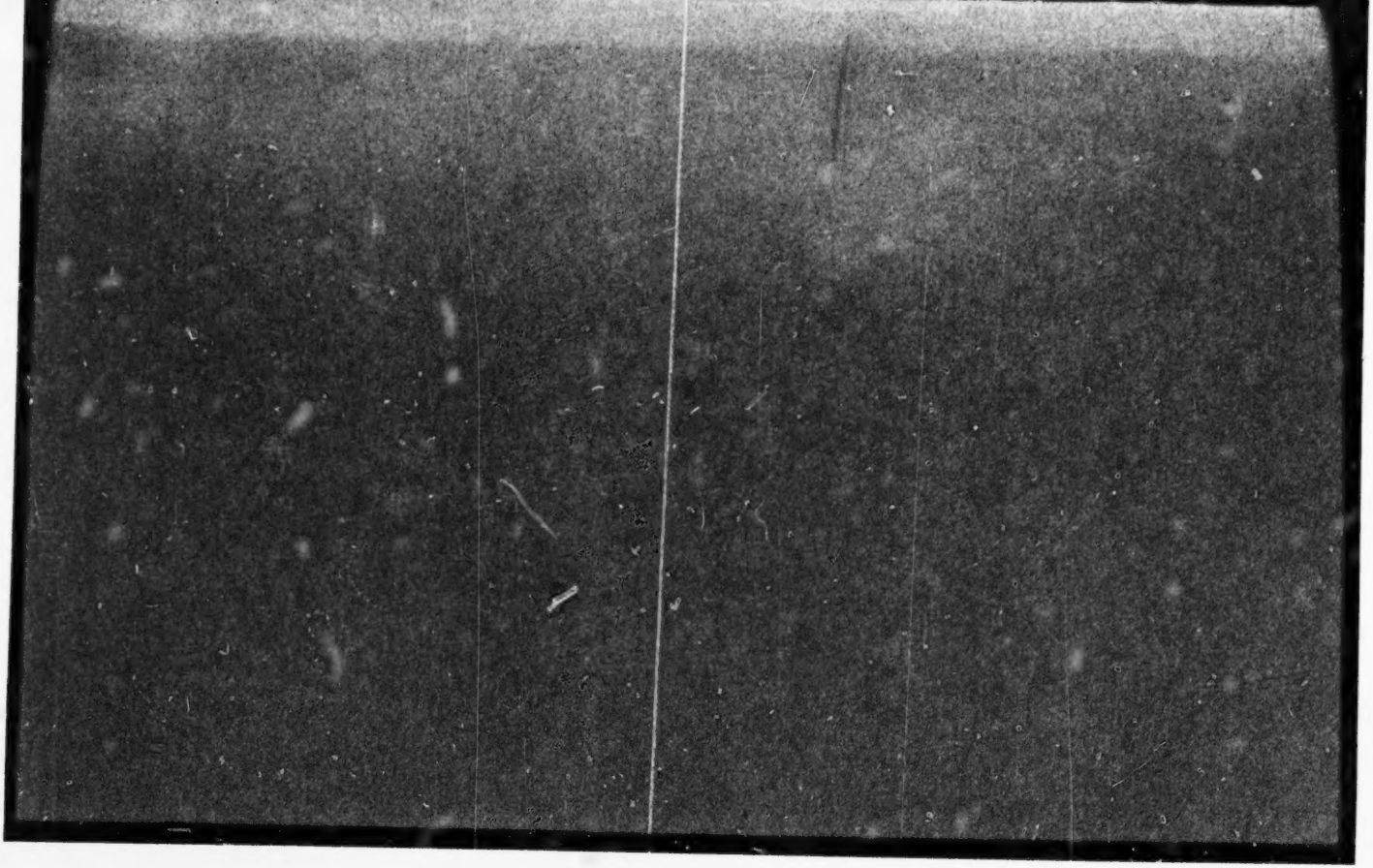
HARRY A. WOODRING, SECRETARY OF WAR AND H. A. A. SMITH, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, PANAMA CANAL, PETITIONERS

vs.

JUSTUS B. WARDELL, RECEIVER DISTRICT NATIONAL BANK OF WASHINGTON, D. C.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JANUARY 31, 1940
CERTIORARI GRANTED MARCH 18, 1940



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 628

HARRY A. WOODRING, SECRETARY OF WAR, AND H. A. A. SMITH, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, PANAMA CANAL, PETITIONERS

VS.

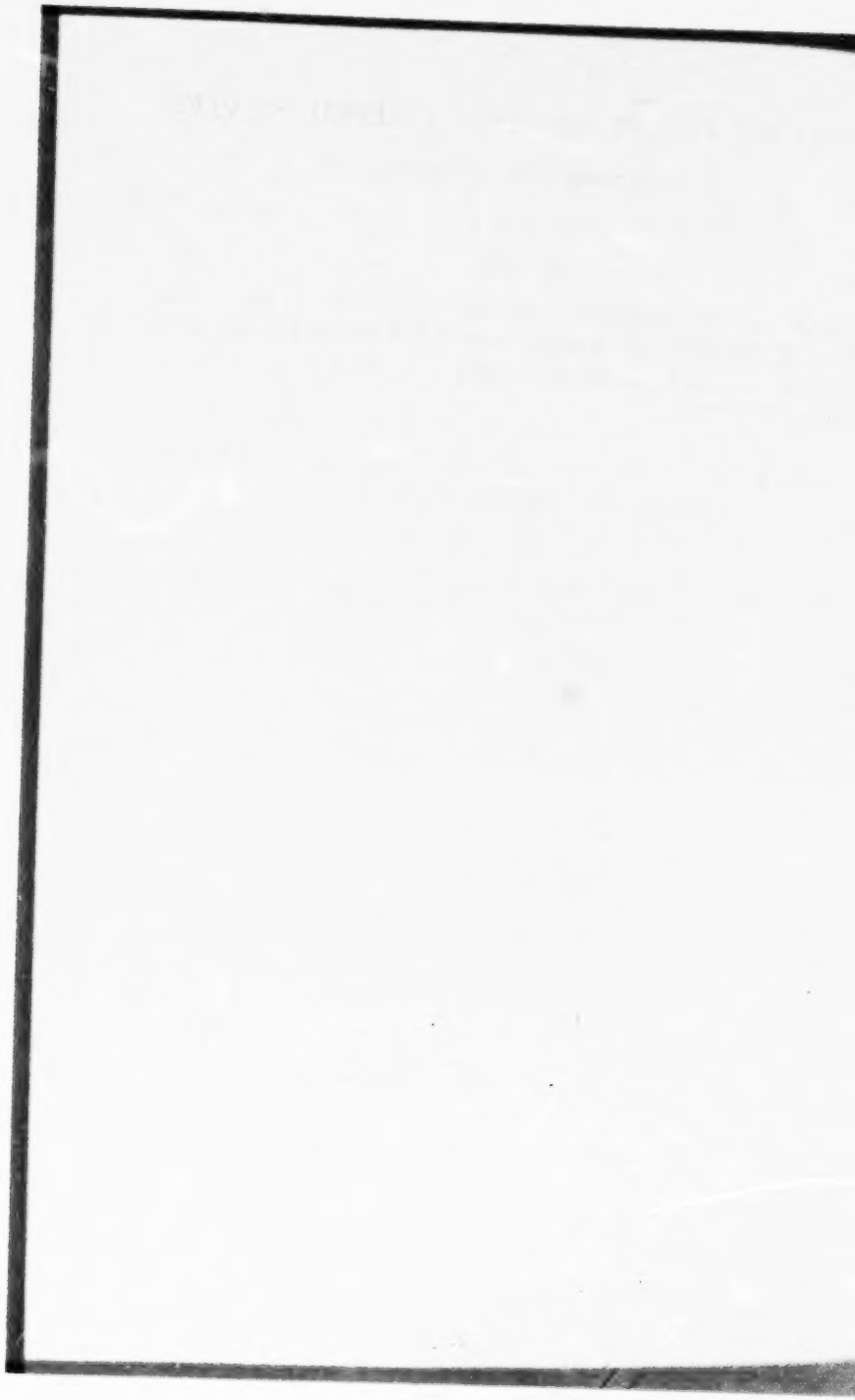
JUSTUS B. WARDELL, RECEIVER, DISTRICT NATIONAL BANK OF WASHINGTON, D. C.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Page
Record from D. C. U. S., District of Columbia	1
Caption	1
Amended bill of complaint	1
Exhibit A—Agreement between Secretary of War and District National Bank, Aug. 18, 1914	8
Exhibit B—List of bonds pledged by bank	11
Order substituting party plaintiff	11
Suggestion of death and substitution of parties defendants	12
Answer of Woodring et al., to amended bill	12
Motion to strike paragraph 7 and defenses 1 and 2 in answer, etc	22
Memorandum of Court	23
Order sustaining motion to strike, etc	23
Defendants object and except to entry of order and decree, objection and exception allowed, appeal noted, &c	24
Assignment of errors of defendants Woodring and Smith	24
Designation of record	25
Clerk's certificate	26
Proceedings in United States Court of Appeals for the District of Columbia	27
Minute entries of argument	27
Opinion, Groner, J	27
Judgment	28
Designation of record	28
Clerk's certificate	29
Order allowing certiorari	31

135800—39



A In the District Court of the United States for the District of Columbia

No. 59007. In Equity

NORMAN R. HAMILTON, RECEIVER, DISTRICT NATIONAL BANK OF WASHINGTON, D. C., A CORPORATION, PLAINTIFF

vs.

GEORGE H. DERN, SECRETARY OF WAR, ARTHUR L. FLINT, GENERAL PURCHASING OFFICER, AND CHIEF OF WASHINGTON OFFICE, THE PANAMA CANAL, CREED FULTON COX, CHIEF OF BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT, C. F. BROWN, DISBURSING AGENT, PHILIPPINE REVENUE, BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT, DEFENDANTS

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1

Amended bill of complaint

Filed June 4, 1936

In the Supreme Court of the District of Columbia

Holding an Equity Court

Equity 59007

NORMAN R. HAMILTON, RECEIVER, DISTRICT NATIONAL BANK OF WASHINGTON, D. C., A CORPORATION, PLAINTIFF

vs.

GEORGE H. DERN, SECRETARY OF WAR, ET AL, DEFENDANTS

The amended bill of complaint of the plaintiff filed with leave of Court first had and obtained, represents to this Honorable Court as follows:

1. The plaintiff is a citizen of the United States, temporarily residing in the District of Columbia, and brings this suit as the duly appointed and qualified Receiver of the District National Bank of Washington, D. C., a national banking association organized under the laws of the United States, formerly having its place of business and conducting its operations in the District of Columbia, and as more fully hereinafter shown.

2. The defendant, George H. Dern, is a citizen of the United States temporarily residing in the District of Columbia. Said defendant is Secretary of War of the United States and is sued as such in his official capacity incident to the performance of his duties with reference to the Canal Zone Territory on the Isthmus of Panama, and also incident

to the performance of his duties on behalf of the Government of the Philippine Islands, all as more fully hereinafter set forth.

2 3. The defendant, Arthur L. Flint, is a citizen of the United States and a resident of the District of Columbia, and is sued in his official capacity as General Purchasing Officer and Chief of Washington Office, The Panama Canal, as more fully hereinafter shown.

4. The defendant, Creed Fulton Cox, is a citizen of the United States and a resident of the District of Columbia, and is sued as Chief of the Bureau of Insular Affairs, War Department, as more fully hereinafter shown.

5. The defendant, C. F. Brown, is a citizen of the United States and a resident of the District of Columbia, and is sued as Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, as is hereinafter shown.

5 (a). The defendant, Henry Morgenthau, Jr., is a citizen of the United States, temporarily residing in the District of Columbia, and is sued as the custodian of certain funds claimed by plaintiff as assets of the District National Bank of Washington, representing the proceeds of certain bonds and certain other moneys paid under mistake of law to George H. Dern and Creed Fulton Cox and transmitted by them to The Chase National Bank of the City of New York and thereafter transmitted by said Chase National Bank to said defendant Henry Morgenthau, Jr.

5 (b). The defendants, and each of them, are sued in both their individual and official capacities.

6. The District National Bank of Washington, D. C., on, to-wit, March 5, 1933, was closed by Proclamation of the President of the United States and never thereafter reopened and was found and determined to be insolvent by the Comptroller of the Currency of the United States, who appointed a conservator on March 14, 1933, and thereafter, on November 6, 1933, plaintiff Norman R. Hamilton, was appointed Receiver of said bank and qualified as such and since such appointment and qualification has been, and now

3 is, the Receiver of said bank acting in such capacity.

7. The plaintiff avers that by virtue of an Act of Congress of June 28, 1902 (described as the Spooner Act, Pub. No. 183, 32 Stat. 483), and by virtue of an Act of Congress of April 28, 1904 (Pub. No. 190, Chapter 1758, Page 429, 58th Congress, Second Session), and by virtue of an Executive Order and letter to the President of the United States, dated May 9, 1904, the Canal Zone Territory was placed under the supervision and direction of the Secretary of War, and the then Secretary of War did, on the 18th day of August, 1914, open a deposit account in said bank designated under the caption "Secretary of War, Canal Zone Funds, Call Account", in accordance with a certain contract entered into by the then Secretary of War and the District National Bank, a copy of which is hereto annexed and marked Exhibit "A" and made a part hereof by this reference; that at the date of closing of said District National Bank the credit balance on deposit in said account amounted to the sum of, to wit, $200,000.00.

Plaintiff further avers that the then Secretary of War did on the 18th day of August, 1914, open a further deposit account in said

bank designated by the caption "Secretary of War, Canal Zone Funds, Checking Account" in accordance with the said contract entered into by the then Secretary of War and the District National Bank, marked Exhibit "A", hereto attached, and made a part hereof as aforesaid; that at the date of closing of said District National Bank the credit balance on deposit in said account amounted to the sum of, to-wit, $14,739.80.

That under and by virtue of the terms of the aforesaid contract, said District National Bank did, from time to time, unlawfully and illegally pledge to and deposit with the then Secretary of War, by the delivery to his subordinate officer, the then General Purchasing Officer of the Panama Canal, certain of said
4 bank's assets consisting of certain bonds of the aggregate par value of $274,200.00, same being more fully described and set forth in the Appendix hereto attached marked Exhibit "B", and made a part hereof by this reference. That as heretofore averred, said pledge of assets by said bank was without authority of law and hence the then Secretary of War was without authority of law to receive and accept said assets so pledged as collateral security for said deposit account, or in any capacity other than in trust for said bank, and accordingly the then Secretary of War received said collateral in trust for said bank, and at the date of closing of said bank, and thereafter, said bonds were held in trust by defendant George H. Dern, Secretary of War, as Successor in interest to his predecessor to whom said bonds had been pledged as aforesaid.

That thereafter, to-wit, on September 24, 1933, the bonds described in Exhibit "B" hereof were sold to the Hamilton National Bank, of Washington, D. C., under an agreement and arrangement by the defendants, the Secretary of War, and the then General Purchasing Officer of the Panama Canal, with the then conservator of the District National Bank, whereby the Secretary of War was illegally paid, under a mistake of law, from the proceeds of the sale of said bonds, the sum of $214,739.80, said sum amounting to the credit balance on deposit in the two accounts of Canal Zone funds deposited by the Secretary of War, as hereinbefore described, when said District National Bank closed, and an additional sum amounting to $3,535.37 representing alleged accrued interest upon said deposit balances to and including September 24, 1933, said above described sums being paid to the Secretary of War and the General Purchasing Officer of the Panama Canal by the setting up of a new deposit account in the Hamilton National Bank of Washington, D. C., in the name of the Secretary of War Canal Zone Funds.

5 Plaintiff avers that said proceeds of the sale of said bonds so paid to the defendants, the Secretary of War and the General Purchasing Officer of the Panama Canal thereupon became a trust fund for the benefit of the depositors, creditors, and stockholders of said District National Bank and, as such, are recoverable by plaintiff from said Secretary of War and said General Purchasing Officer of the Panama Canal, together with interest on said sums of $214,739.80 and $3,535.37 at the legal rate from September 24, 1933, the date of said illegal payment, to the date of reimbursement or repayment of said sum to plaintiff as a trust fund for the benefit of the depositors and other creditors and stockholders of said District

National Bank, subject to such adjustments and deductions as said Secretary of War and said General Purchasing Officer of the Panama Canal may be entitled to receive by reason of a 5% distribution to all depositors and creditors of the District National Bank, of the amount of their balances or claims on March 1, 1933, and the further distribution of 50% on the amount of the provable claims of the depositors and other creditors of the District National Bank as allotted by the conservator thereof, and paid on September 24, 1933.

8. That Section 625 of the Revised Administrative Code of 1917 of the Philippine Islands authorized the Secretary of War to designate a depositary bank in the United States for the deposit of funds of the Government of the Philippine Islands, upon the placing by the depositary bank with the Bureau of Insular Affairs, of the War Department, of bonds of the United States satisfactory to and approved by the Secretary of War. That as of November 11, 1932, the then Secretary of War, purporting to act under authority of the aforesaid statute, designated said District National Bank as such depositary of moneys of the Government of the Philippine Islands

6 and approved, as Secretary of War, a bond given by said District National Bank to the then Government of the Philippine Islands providing for and covering the deposit of funds of the Government of the Philippine Islands in said District National Bank, a copy of said bond being hereto annexed, marked Exhibit "C", and made a part hereof by this reference. That under said contract deposits were made from time to time in said bank and were duly credited to an account captioned "Treasurer of Philippine Islands Gold Standard Fund Account," and at the date of closing of said District National Bank the credit balance on deposit in said account amounted to, to wit, $751,801.40.

That purporting to act under the authority of the aforesaid statute, the said District National Bank without authority of law pledged, and the then Secretary of War, through and by the then Chief of the Bureau of Insular Affairs of the War Department, under the supervision and direction of the Secretary of War, accepted certain assets of the District National Bank as collateral security for the payment of such amount as might be due under said deposit account; that at the date of closing of said District National Bank the Secretary of War, through and by the then Chief of the Bureau of Insular Affairs, held, as pledgee to secure said deposit account, certain of the assets of said District National Bank, consisting of certain bonds of the par value of $750,000.00, the same being more fully described and set forth in Exhibit "D" attached hereto and made a part hereof by this reference.

That on, to wit, August 11, 1933, said bonds (or others substituted in lieu thereof) were sold by defendant George H. Dern, Secretary of War, acting through and by the then Chief of the Bureau of Insular Affairs of the War Department, for the sum of, to wit, $770,721.27, a schedule of the bonds so sold, and the price obtained therefor, being more fully set forth in Exhibit "E" hereto attached and made a part hereof by this reference.

7 Plaintiff avers that the aforesaid Section 625 of the Revised Administrative Code of 1917 of the Philippine Islands did not constitute authority in law for the pledge by said District National

Bank of its aforesaid assets to the Secretary of War and to the Chief of the Bureau of Insular Affairs, and no authority otherwise existed in law for said pledge of assets by said District National Bank. Plaintiff therefore avers that said assets so pledged (or others substituted in lieu thereof) were received by the then Secretary of War, acting through and by the then Chief of the Bureau of Insular Affairs, and were subsequently acquired by their successors in office, including defendant George H. Dern, Secretary of War, and defendant Creed Fulton Cox, Chief of Bureau of Insular Affairs, subject to a trust in favor of said District National Bank, its depositors and creditors and stockholders. Plaintiff further avers that said trust continued and attached to the said bonds (or others substituted in lieu thereof) and to the proceeds of the sale of same as aforesaid, and defendant George H. Dern as Secretary of War, and defendant Creed Fulton Cox, as Chief of Bureau of Insular Affairs, War Department, and as successor to the Chief of said Bureau holding office at the time of said sale, are accountable as trustees under said trust to the plaintiff, as receiver of said banks for and on behalf of the depositors and other creditors and stockholders of said bank, for the proceeds of said sale of said bonds, together with interest at the legal rate upon the amount of said proceeds from the dates of sale of said bonds, subject to adjustment and deduction for such amount as may be found to be lawfully due the Government of the Philippine Islands as dividends upon the said deposit balance at suspension of said bank, on a parity with other general and unsecured creditors of said bank and subject to such further adjustment as may be necessary
8 arising from the erroneous payment on April 17, 1933, by the conservator, under mistake of law, to the Government of the Philippine Islands of the sum of $25,000.00, and subject to such further adjustment as may be necessary arising from the erroneous payment on August 11, 1933, of $6,620.55 as interest on $750,000.00 from February 26, 1933, to April 16, 1933, at 2% and as interest on $725,000.00 from April 17, 1933, to August 11, 1933, at 2%.

The plaintiff further avers that C. F. Brown is the Disbursing Agent of the Philippine Revenue, Bureau of Insular Affairs, War Department, and as such Disbursing Agent has in his custody and under his control, moneys of the Philippine Islands, and is the Chief Disbursing Agent of Philippine funds in the District of Columbia, and said defendant is sued in his official capacity as Disbursing Agent of funds of the Government of the Philippine Islands, from which the Court may direct the payment of any moneys found due this plaintiff.

8 (a). The plaintiff further avers that on to-wit the 11th day of August, 1933, the date the said bonds were sold, as heretofore described in paragraph 8 of the bill, the proceeds from the sale of said bonds were transmitted to and placed with the Chase National Bank of the City of New York and thereafter said proceeds, together with other moneys paid under mistake of law to George H. Dern and Creed Fulton Cox and transmitted to the Chase National Bank of the City of New York, or part thereof, were transmitted to and placed with Henry Morgenthau, Jr.; and plaintiff further avers, by reason of the facts set forth in said bill of complaint and this amendment, that said proceeds derived from the sale of said securities were funds of the

plaintiff herein, as were the moneys erroneously paid said George H. Dern and Creed Fulton Cox and transmitted by them to the Chase National Bank of the City of New York and by it to said Henry
9 Morgenthau, Jr., and by reason of the foregoing said Henry Morgenthau, Jr., received said proceeds and now holds them in trust for plaintiff.

9. Plaintiff further avers that the funds claimed by him in the bill of complaint, as hereinbefore set forth, are not moneys of the United States are not part of the revenues of the United States, are not subject to the control of the Secretary of the Treasury of the United States in his official capacity as Secretary of the Treasury with respect to moneys of the United States, and said moneys hereinbefore claimed from the defendant, George H. Dern and Arthur L. Flint, in connection with their official position relating to the Panama Canal, are not moneys of the Panama Canal, and said moneys claimed from George H. Dern, Creed Fulton Cox, C. F. Brown and Henry Morgenthau, Jr. are not moneys of the Government of the Philippine Islands, and all of said moneys claimed by plaintiff in said bill of complaint are part of the trust assets of the insolvent District National Bank of Washington, D. C., belonging to the general creditors of the bank, out of which trust assets all creditors are entitled to be paid ratably. The plaintiff further avers that said funds hereinbefore claimed by plaintiff in the bill of complaint have not been covered into the Treasury of the United States or the Treasury of any state, territory, or other government. Plaintiff further avers that the District National Bank of Washington, D. C., was never designated by the Secretary of the Treasury under regulations prescribed by said Secretary, to receive deposits of the Government of the Canal Zone or the Government of the Philippine Islands, nor did the Secretary of the Treasury exact from said District National Bank of Washington, D. C. the pledges of securities which are the subject matter of this suit.

WHEREFORE, the premises considered, the petitioner prays:-
10 1. That a writ of subpoena issue out of this Honorable Court to the defendants, and each of them, requiring them to appear and answer the exigencies of this Bill of Complaint.

2. That the defendants, George H. Dern and Arthur L. Flint, as Secretary of War and General Purchasing Officer and Chief of Washington Office, The Panama Canal, respectively, or their successors in office, be required to account to plaintiff for the sum of $214,739.80, principal, and $3,535.37, alleged accrued interest, paid on September 24, 1933, with interest thereon at the legal rate from September 24, 1933, the date of said payments as aforesaid, to the date of the repayment to plaintiff of said sums; subject to such credits as may be further due said defendants by reason of a 5% distribution as of March 1, 1933, to all of the bank's depositors, and a further dividend of 50% paid depositors as of September 24, 1933, upon provable claims allowed upon 95% of the credit balance of depositors when the bank went on a 5% restricted basis.

3. That George H. Dern, as Secretary of War, and Creed Fulton Cox, as Chief of the Bureau of Insular Affairs, War Department, and C. F. Brown, as Disbursing Agent of the Philippine Revenue, Bureau of Insular Affairs, War Department, be required to account to

plaintiff, as a trust fund for the benefit of the depositors, other creditors and stockholders of the insolvent District National Bank, for the sum of $25,000.00, with interest thereon at the legal rate from April 17, 1933, subject to such offsets as may be interposed thereto, by reason of subsequent dividend payments in said bank.

4. That George H. Dern, as Secretary of War, and Creed Fulton Cox, as Chief of the Bureau of Insular Affairs, War Department, and C. F. Brown, as Disbursing Agent of the Philippine Revenue, Bureau of Insular Affairs, War Department, be required
11 to account to plaintiff, as a trust fund for the benefit of the depositors, and other creditors and stockholders of the insolvent District National Bank, for the sum of $733,421.95, representing $726,801.40 principal and interest due on March 1, 1933, in said account, $6,620.55, representing alleged accrued interest due from March 1, 1933, to August 11, 1933, as adjusted, subject to such credits as may be available to said defendants by reason of dividend payments to depositors of the subject bank, and subject further to such adjustments as may be required for the reimbursement to plaintiff for interest on the moneys wrongfully paid from the dates of such payment to the date of the reimbursement to plaintiff.

5. That the defendant, C. F. Brown, as Disbursing Agent of the Philippine Revenue, Bureau of Insular Affairs, War Department, or his successor in office, be required to pay and satisfy any judgment or decree entered by this Court, in respect to funds of the Government of the Philippine Islands from such moneys as said C. F. Brown, or his successor in office, may have under their control or in their possession.

5 a. That the defendant, Henry Morgenthau, Jr., be required to account for and pay over to the plaintiff, as a trust fund for the benefit of the depositors and other creditors and stockholders of the insolvent District National Bank of Washington, so much of the proceeds from the sale of the bonds described in paragraph numbered 5 of the bill of complaint that have been transmitted to said Henry Morgenthau, Jr., from the Chase National Bank of the City of New York, together with such other moneys of plaintiff erroneously paid under mistake of law to George H. Dern and Creed Fulton Cox and thereafter transmitted by them to the Chase National Bank of the City of New York and by it transmitted to said Henry Morgenthau, Jr.

5 b. That the Court grant such discovery and accounting
12 as the nature of the case may require in order to grant plaintiff the relief herein prayed.

6. And for such other and further relief as to this Honorable Court may seem just and proper.

NORMAN R. HAMILTON,
Receiver, District National Bank.
GEORGE P. BARSE,
Of Counsel.

BRICE CLAGETT,
CHARLES E. WAINWRIGHT,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Norman R. Hamilton, being first duly sworn, deposes and says that he has read the foregoing amended bill of complaint by him sub-

scribed and knows the matters and things therein contained are true to the best of his knowledge and belief.

NORMAN R. HAMILTON, *Receiver.*

Subscribed and sworn to before me this 4th day of June, 1936.

[SEAL]

WM. C. LOCKER,
Notary Public, D. C.

"Exhibit A"

THIS AGREEMENT, made at Washington, District of Columbia, this 18th day of August, 1914, between the SECRETARY OF WAR, the executive officer of the United States charged by the President with the supervision and control over the governmental affairs of the Canal Zone, and the DISTRICT NATIONAL BANK, of Washington, Dis-
13 trict of Columbia, a corporation organized and existing under the banking laws of the United States, hereinafter called the Bank,

WHEREAS, the administrative officers of the Canal Zone have collected and received, and will continue to collect and receive, hold, deposit, disburse and expend municipal, administrative district and various other funds, deposits, postal funds, and other obligations, securities, funds and moneys which may come into their custody, and

WHEREAS, the Secretary of War desires to secure a safe and sure place for the deposit, custody, safe-keeping and disbursement of said moneys and funds, and also an expeditious and effective method of auditing, inspecting examining, transferring and disbursing the said moneys and funds, and

WHEREAS, the Bank guarantees that it has a suitable, safe and convenient place for the deposit of the various funds, deposits, postal funds and other obligations, securities, funds and moneys which may come into the custody of the administrative officers of the Canal Zone, and that it is prepared to undertake the custody and safe-keeping of and accounting for said moneys and funds at its place of business and in its banking house in the District of Columbia,

NOW, THEREFORE, it is understood and agreed as follows:

ARTICLE I. That upon the execution and delivery of this agreement and the deposit with Major F. C. Boggs, Corps of Engineers, United States Army, General Purchasing Officer of The Panama Canal, of bonds as security therefor, as hereinafter provided, there will be deposited with the Bank at its banking house in the City of Washington, District of Columbia, such part of the moneys and funds above referred to and covered by this agreement as may be found convenient and necessary. The deposits will be made in such amounts and
14 at such times as may be practicable and convenient to the Collector of The Panama Canal, or to other officers and agents duly authorized by the Secretary of War.

ARTICLE II. That the Bank, in consideration of the benefits it will derive from being made such place of deposit, the mutual entering into of the agreement herein set forth, and the deposit with it of such moneys and funds, undertakes and agrees to receive and safely keep and disburse and properly account for all moneys and funds deposited with and turned over to it by the Collector of The Panama Canal, or by other agents, or representatives of the Secretary of War.

ARTICLE III. That the amount of the deposits made with the Bank shall be divided into two parts, one part to be known as the "call account" and the other part to be known as the "checking account." The division of funds between the two accounts shall be such that all funds deposited up to the time the Secretary of War gives notice to the Bank to establish a "checking account" shall be charged to the "call account," and that the balance on deposit in said Bank in excess of this sum shall be charged to the "checking account"; Provided, however, that the Secretary of War himself, or through his authorized representative, may order, in his discretion, after thirty days' notice, such changes by reduction or increase in the "call account", or by transfer from the "call" to the "checking account," or vice versa, as the interests of the service may require; and, provided further, that in case of emergency, checks may be drawn against the "call account" for immediate payment, it being understood, however, that such account shall not be subject to check, except in case of emergency, without written notice being given to the Bank thirty days before the draft is made on such "call account"; and, provided further, that all moneys on deposit with said
15 Bank may be placed either entirely in the "call account" or entirely in the "checking account", in the discretion of the Secretary of War.

ARTICLE IV. That the Bank shall pay interest on all moneys and funds deposited under this agreement, as follows:

On the "call account" interest shall be paid on the daily balances at the rate of three (3) per centum per annum, until the "checking account" is established.

When the "checking account" shall have been established, as provided in Article III hereof, interest shall be paid on the minimum monthly balances of the "call account" at the rate of three (3) per centum per annum.

On the "checking account" interest shall be paid on the daily balances at the rate of two and one-half (2½) per centum per annum.

It is understood and agreed that, on the first day of each month, all interest earned for the preceding month on each account shall be placed to the credit of the "checking account"; provided that if there be no "checking account" interest shall be placed to the credit of the "call account."

ARTICLE V. That the Bank shall accept and pay, without charge or discount, all bills, drafts, and checks drawn upon it by the Secretary of War, the Collector of The Panama Canal, or by other officers or persons duly authorized for that purpose, when said bills, drafts, or checks are properly presented or come to it for acceptances or payment, and drawn against said moneys and funds so deposited, and will promptly account for all moneys and funds received and pay over the balance at any time remaining in its hands of all and any moneys and funds so received by it to the said Collector of The Panama Canal, or other officers or persons duly authorized for the purpose by the Secretary of War, or by his succeeding lawfully designated governing authority of the Canal Zone, when called upon so to do.

16 ARTICLE VI. That the Bank on the first day of each month, and at such other times as it may be requested to do so, shall

render a statement of deposits and payments covering the preceding month, or part of month, to the Collector of The Panama Canal, or to such other officers or persons as shall be duly authorized for that purpose, and its books of account shall at all times show the amount of moneys and funds in the keeping of said Bank deposited under this agreement.

ARTICLE VII. That this agreement shall continue in force until terminated on written notice, which may be given at any time by either party to the other: Provided, however, that this agreement shall be immediately terminated should Congress by law direct its termination or give instructions concerning the funds covered by this agreement inconsistent with the terms hereof. In case this contract is terminated the Bank shall immediately pay to the Secretary of War, the Collector of The Panama Canal, or other officers or agents duly authorized for the purpose, any balance remaining to the credit of the account.

ARTICLE VIII. That, as security for the safe-keeping and prompt payment of the moneys and funds deposited under this agreement and the faithful performance thereof, the Bank shall deposit with Major F. C. Boggs, Corps of Engineers, United States Army, General Purchasing Officer of The Panama Canal, bonds of the acceptable value of a sum not less at any times than the amount of moneys and funds deposited under this agreement. Said bonds shall be deposited in the vaults of the American Security and Trust Company in accordance with an agreement of even date herewith, a copy of which is attached hereto and made a part hereof. The Bank agrees to increase the deposit with Major F. C. Boggs of acceptable bonds, as additional moneys and funds are deposited with it, in such amount that the moneys and funds deposited under this
17 agreement will at all times be fully secured by bonds of the following classes at the values specified: "United States, Philippine, Porto Rico, and District of Columbia bonds will be accepted at par; bonds of Hawaiian Territory at ninety (90) per cent, and, if otherwise satisfactory to the Secretary of War, or his representative, Philippine Railway bonds and those of States, municipalities, and high-grade railroads, such as are legal investments for savings banks in the States of New York, Massachusetts, Connecticut, or New Jersey, at ninety (90) per cent of their market value, but not exceeding ninety (90) per cent of their par value."

In the absence or inability of Major Boggs to act, his representative or successor as custodian of said bonds shall be designated by or with the approval of the Secretary of War.

ARTICLE IX. That, in the event the Bank fails to make prompt payment or fails to safely keep the moneys and funds deposited with it, or otherwise fails to faithfully perform all the provisions of this agreement, the said bonds shall become the property of the Secretary of War and may be either retained by him or may be sold, transferred and conveyed, in whole or in part, by the said Secretary of War or his duly authorized agent, as his absolute property, and the proceeds realized from the said sale or sales shall be applied by the said Secretary of War or his agent, to the liquidation of any amount due by the Bank under this agreement, any residue thereof, after said liquidation to be delivered to the Bank.

ARTICLE X. That all or any acts which may be performed, and all or any orders which may be given, by the Secretary of War under this agreement may be performed or be given by the Acting Secretary of War with the same force and effect as if they were performed or given by the Secretary of War himself.

18 IN WITNESS WHEREOF, the Secretary of War has signed this agreement in triplicate, and the Bank has caused it to be signed likewise in triplicate by its proper officers and its corporate seal affixed thereto the day and year first above written.

(Signed) LINDLEY M. GARRISON,
Secretary of War.

In the presence of:
(Signed) F. C. BOGGS.

[SEAL] DISTRICT NATIONAL BANK,
Washington, D. C.

By (Sgd) ROBT. N. HARPER,
as its President.

Attest:
(Signed) EDMUND S. WOLFE,
as its Cashier.

Exhibit B

List of various and sundry bonds pledged by the District National Bank of Washington to A. L. Flint, general disbursing officer and chief of office, Panama Canal * * *

$5,000.00	Par value, Federal Land Bank 4½'s 1933
49,000.00	Par value, Federal Land Bank 4½'s Bonds
90,000.00	Par value, Federal Land Bank 4½'s 1953
40,000.00	Par value, Federal Land Bank 4½'s 1936–56
45,000.00	Par value, Federal Land Bank 4½'s 1942–32
15,500.00	Par value, U. S. Treasury 3% Bonds 1951–55
11,200.00	Par value, U. S. 3¼% Treasury Notes, 1937
5,000.00	Par value City of San Francisco, 4½%, 1938
6,000.00	Par value City of Boston, Mass. 4¼%, 1939
$274,200.00	

19 *Order substituting party plaintiff*

Filed July 13, 1936

* * * * * * *

Upon consideration of the motion of the plaintiff in the above-entitled cause for leave to substitute Justus S. Wardell as plaintiff in the above-entitled cause in the place of Norman R. Hamilton, resigned, it is, by the Court, this 13th day of July, A. D., 1936

ORDERED, that the said Justus S. Wardell be, and he hereby is, substituted as plaintiff in the above-entitled cause in the place of Norman R. Hamilton, now resigned as Receiver of the District National Bank of Washington.

DANIEL W. O'DONOGHUE, *Justice.*

O. K.
DAVID A. PINE,
Asst. U. S. Atty.

Suggestion of death and substitution of parties defendants

Filed October 6, 1936

* * * * * * *

This cause having come on for further consideration, upon the suggestion made in open Court by counsel for the plaintiff and defendants herein of the death of defendants George H. Dern and Arthur L. Flint, and it appearing to the satisfaction of the Court that Harry H. Woodring has succeeded the decedent George H. Dern as Secretary of War and that H. A. A. Smith has succeeded the decedent Arthur L. Flint as General Purchasing Officer and Chief of Washington Office, The Panama Canal, it is by the Court this 6th day of October, 1936

ORDERED, That Harry H. Woodring be, and he hereby is, made a party defendant herein in the place and stead of George H.
20 Dern, deceased, and it is further ordered that H. A. A. Smith be, and he hereby is, made a party defendant herein in the place and stead of Arthur L. Flint, deceased.

ALFRED A. WHEAT, *Chief Justice.*

Answer of defendants Woodring, et al., to amended bill

Filed October 31, 1936

* * * * * * *

Come now, Harry H. Woodring, Secretary of War, H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, Creed Fulton Cox, Chief of Bureau of Insular Affairs, War Department, and C. F. Brown, Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, named defendants in the above-entitled cause, and for answer to the amended bill of complaint herein filed, or to such part or parts thereof as they are advised it is material for them to answer, answer and say:

1. Defendants admit the allegations contained in paragraph numbered 1 of said amended bill of complaint.

2. Defendants admit that George H. Dern was at the time of the filing of the amended bill of complaint, Secretary of War, but aver that he has since died and that Harry H. Woodring is now Secretary of War and as such, has been substituted as a party defendant in the place and stead of said George H. Dern.

3. Defendants admit that Arthur L. Flint was, at the time of the filing of the original bill of complaint, General Purchasing Officer and Chief of the Washington Office, Panama Canal, but aver that he died on or about May 18, 1936, and that H. A. A. Smith has succeeded him and has been substituted in his official capacity only
21 as a party defendant in the place and stead of said Arthur L. Flint; that his title in said office is now Chief of Office and General Purchasing Officer, Panama Canal.

4 & 5. Defendants admit the allegations of paragraphs 4 and 5 of said amended bill of complaint.

5 (a). These defendants admit the allegations concerning the citizenship and temporary residence of defendant Henry Morgenthau, Jr., as alleged in paragraph 5 (a).

5 (b). These defendants deny that Harry H. Woodring and H. A. A. Smith are sued as individuals in this cause; on the contrary, they aver that they are made parties in their respective official capacities only by substitution in place of their predecessors in office.

6. Defendants admit the allegations contained in paragraph numbered 6 of the amended bill of complaint.

7. Defendants Creed Fulton Cox, Chief of Bureau of Insular Affairs of the War Department and C. F. Brown, Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs of the War Department, aver that they have no knowledge of, interest in or concern with, the matters and things set forth in paragraph 7 of the said bill of complaint and that the allegations therein contained state no cause of action against them or either of them.

Defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, answering said paragraph numbered 7, admit that the Panama Canal Zone territory was placed under the supervision of the Secretary of War; they admit the opening of deposit accounts as specified, in the District National Bank pursuant to the contract entered into between the said Bank and the then Secretary of War as alleged in subparagraphs one and two of said paragraph 7; they also admit that the balances due at the time of the closing of said bank were as stated in said subparagraphs.

22 Said defendants admit the pledge of bonds of the amount and as described, and the deposit thereof with the then General Purchasing Officer of the Panama Canal as set forth in the third subparagraph of said paragraph numbered 7 but deny that said pledge and deposit were, or either of them was, unlawful and illegal or without authority of law; they further deny that the then Secretary of War was without authority to receive and accept the said securities as collateral for said deposits and deny that said securities were held in trust for the said District National Bank by the then Secretary of War or are so held by these defendants.

Said defendants admit the sale of the bonds or securities referred to, to the Hamilton National Bank, and the payment of the proceeds thereof in the sum specified and interest, in the manner and as alleged in subparagraph 4 of said paragraph 7 but deny that said payment was made illegally or under a mistake of law; on the contrary, these defendants aver that said sale and said payment were in all respects regular, lawful and in accordance with authority conferred upon the Secretary of War under Acts of Congress and regulations pursuant to statutory authority.

Said defendants deny that the said proceeds of the sale of the bonds were or are a trust fund, and deny that they are recoverable as such by plaintiff as alleged in subparagraph five of said paragraph 7.

Further answering said allegations, said defendants aver that the making of the contract for the deposit and delivery of said securities, a copy of which is made Exhibit "A" to the bill of complaint and is incorporated in this answer by reference, was within the authority and power of the Secretary of War conferred upon him by Acts of Congress and by regulations promulgated pursuant

to statutory authority; that the securities pledged pursuant to
23 the terms of said contract were lawfully in the possession of defendant Secretary of War's predecessors in office; that the deposits for which said securities were pledged were at the time of the closing of said bank, almost entirely composed of moneys received by the Postal Service of the Canal Zone and consisted of deposit money order funds and money order funds, which the United States is obligated to redeem and pay.

Further, said defendants aver that by the Panama Canal Act of June 28, 1902 and the supplementary act of April 28, 1904, the President of the United States was given complete governmental control over the Canal Zone with power to legislate either directly or through the Isthmian Canal Commission, or such other persons as he might designate; that the President authorized the Secretary of War to exercise these powers on his behalf; that the then Secretary of War in 1904 directed the Isthmian Canal Commission to establish a postal service in the Canal Zone and said service was established by Act No. 7 of September 2, 1904, of the said Commission; Section 42 of said Act provided that the Postal Service of the Canal Zone should "be conducted, regulated, and controlled by such of the laws, rules, and regulations of the postal service of the United States as are not inapplicable to the conditions of law and fact existing in the Canal Zone, and the laws enacted and the rules and regulations adopted by the Isthmian Canal Commission," this provision being re-enacted in the Act of February 16, 1933, 47 Stat. 812, as a part of the Canal Zone Code then in course of enactment. Further, that by section 1 of the Act of August 21, 1912, c. 387, 37 Stat. 512, U. S. Code, Title 39, section 759, it was provided, with respect to Postal Savings funds of the United States, that such funds should be deposited in solvent banks, whether organized under national or State laws, being subject to national or state supervision and examination and that "the board of trustees shall take from such banks such securities
24 in public bonds or other securities, authorized by act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand." These defendants aver that the provision of said section insofar as it required security for postal savings funds was not inapplicable, but was applicable, to deposit money orders issued in the Canal Zone; and that it made it incumbent upon the Secretary of War and those under his supervision having direct control of the funds, to require security from banks before making deposits, and authorized the bank to give such security; further, that Section 2 of the Panama Canal Act of August 24, 1912, 37 Stat. 560, ratifying and confirming as valid and binding "all laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government * * * of the Canal Zone" ratified and confirmed the directions and actions of the Secretary of War in requiring the deposit of securities to safeguard the public moneys of the Canal Zone under his supervision; further, that Section 6 of the Act of August 21, 1916, 39 Stat. 528, authorized the issue of deposit money orders in the Canal Zone, in lieu of postal savings certificates then in existence, and by Section 7 of said Act, ratified the action taken by the Secretary of

War in depositing money order funds in banks under Canal Zone regulations, and authorized the use of interest received therefrom to pay interest on deposit money orders, and any losses chargeable to the Canal Zone Postal Service, and that this was further ratified and confirmed by Section 11 of the Act approved September 21, 1922, increasing the interest rate on deposit money orders to not to exceed 3% ; that in conformity with the orders of the President of October 22, 1916, and December 6, 1922, the Governor of The Panama Canal was authorized to prescribe detailed regulations to carry out
25 the terms of the order, and that the Governor did, by Circular No. 660-61 of April 5, 1923, provide that:

"Postal savings, money order, clubhouse, and other trust and security funds received shall be remitted to depositories in accordance with contracts entered into by the Secretary of War, and disbursed only on vouchers or warrants approved by the Auditor."

that is, the Auditor of the Panama Canal, whose position was established by Executive Order of the President, and who had supervision o the Department having charge of the "collection, custody, and disbursement of funds for the Panama Canal and Canal Zone."

Further answering said paragraph 7, said defendants aver that the action of the Secretary of War in requiring security for the deposits aforesaid and in entering into the contract of August 18, 1914, was in accordance with a practice and custom, initiated in respect of Panama Canal funds, January 19, 1909 by a contract entered into on that date between the Commercial National Bank of Washington, D. C., and the Government of the Canal Zone, which contract was superseded by a contract dated May 11, 1910, between said bank and the Secretary of War and to which latter contract there was a supplemental agreement dated April 13, 1913; that the action of the Secretary of War and his subordinates in negotiating for the giving of security to safeguard deposits and of the entering into said contracts was the subject of correspondence between both the Secretary of War and The Panama Canal, and the Treasury Department, and was approved by the Secretary of the Treasury, and the entering into of the contract with the District National Bank, made a part of this answer by reference, was specifically recommended by the Comptroller of the Currency and the Secretary of the Treasury.

That said practice and custom were recognized, acted upon, and adopted in respect of other deposits of funds which were under the control of or administered by other departments or agen-
26 cies of the United States and was continued without objection or question or challenge for more than twenty years and until after the closing of the various banks in which such funds were deposited.

These defendants further aver that said practice and custom were also known to the respective Comptrollers of the Currency during the period of more than twenty years since its inception and up to and subsequent to the sale of the securities complained of in the bill of complaint; that no objection thereto was ever raised or made by any of the said Comptrollers and the said practice and custom aforesaid were recognized and received and had the approval and sanction of said officials; that the Comptroller of the Currency was also aware

of the proposed sale of the said securities and made no objection thereto and took no action to prevent it but sanctioned and approved the said sale.

Further, that Congress was informed that security for deposits of Canal Zone funds was being exacted of, and given by, banks; Annual Reports of the Isthmian Canal Commission made to it for the years 1913 to 1916, inclusive; and also by reports made to it by Congressional Committees on proposed legislation for the Canal Zone.

For a further and separate defense to the alleged cause of action set forth in said paragraph 7, these defendants say that the plaintiff ought not to have and maintain this suit, for the following reasons:

1. The said deposits made in the District National Bank were of monies of the United States so deposited by agents of the United States; that the said securities were pledged to insure said deposits and were given and received for the United States; the sale thereof and the deposit of the proceeds in the Hamilton
27 National Bank was for and on behalf of the United States and the credit thereby established is a credit of and for the United States; that any decree or judgment against these defendants would affect materially the United States in respect of its resources and assets; that the United States is, therefore, the real party in interest as a defendant and an indispensable party to this suit in whose absence the Court ought not to proceed.

2. The plaintiff has a plain and adequate remedy at law against the United States in the United States Court of Claims for the amount claimed.

8. Defendant H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, answering said paragraph numbered 8, avers that he has no knowledge or information of, or interest in, or concern respecting the matters and things alleged therein, and that no cause of action against him is set forth in said paragraph.

Defendants Harry H. Woodring, Secretary of War, Creed Fulton Cox, Chief of Bureau of Insular Affairs, War Department, and C. F. Brown, Disbursing Agent Philippine Revenue, Bureau of Insular Officers, War Department, answering said paragraph, admit the allegations of fact contained in the subparagraphs one, two and three of said paragraph 8 except the allegation contained in subparagraph two that the Secretary of War, through and by the then Chief of the Bureau of Insular Affairs, held, as pledgee, the assets referred to, which allegation defendants deny and on the contrary aver that the pledgee was the Government of the Philippine Islands; further, they deny that the pledging of security for the deposit account specified, by the District National Bank was without authority of law as alleged in subparagraph two.

Said defendants aver that the allegations contained in subparagraph four of said paragraph 8 are conclusions of law to which
28 they are not required to make answer; nevertheless, they deny said allegations, and specifically deny that there was no authority for giving the said pledge by the said District National Bank; deny that the assets received by the then Secretary of War or his subordinates were subject to any trust in favor of the said bank or its depositors or creditors or are now so held and deny that they or any of them are accountable therefor. Further and particularly

answering that allegation of said subparagraph relative to the alleged erroneous payment by the then Conservator of the said District National Bank of the sum of $25,000 to the Government of the Philippine Island, these defendants aver that if, as alleged in said subparagraph, the said payment was made "under mistake of law," there can be no recovery in respect thereto.

Answering subparagraph 5 of said paragraph 8, defendants admit allegations as to the official status of defendant C. F. Brown; as to the power of the Court asserted in said subparagraph, these defendants submit that no answer is required of them.

8 (a). These defendants admit that the proceeds of the sale of the bonds, described in paragraph 8, were transmitted to and placed with the Chase National Bank of the City of New York as alleged in paragraph 8 (a) of the amended bill of complaint. Defendants are without knowledge or information sufficient to form a belief as to whether, as alleged in said paragraph numbered 8 (a), said proceeds or any part thereof were transmitted to defendant Henry Morgenthau, Jr., and therefore deny the allegation to that effect and demand strict proof thereof, if the same be material. Defendants further deny that the monies deposited with defendant Morgenthau, Jr., were or are funds of the plaintiff herein and deny that said Morgenthau, Jr., received and holds the same in trust for plaintiff; on the contrary, these defendants aver that said proceeds and the
29 amount of said payment were and are monies of the government of the Philippine Islands and were deposited with the said Chase National Bank to the credit of the Treasurer of the Philippine Islands; that said bank had been designated as a branch of the Philippine Insular Treasury and as a depositary of the government of the Philippine Islands.

Further, defendants aver that the monies alleged to have been transmitted by the said Chase National Bank and held by and in the custody of defendant Henry Morgenthau, Jr., are monies of the Government of the Philippine Islands and are held by him as Secretary of the Treasury under the authority of the Act of June 11, 1934, 48 Stat. 929.

Further answering said amended bill of complaint, defendants aver that section 625 of the Revised Administrative Code of 1917 of the Philippine Islands was and is authority for the requirement of security to insure deposits of funds of the Philippine Government and constituted ample authority for the giving of the security herein involved by the District National Bank and the receipt of it by the then Secretary of War. That said section 625 is as follows:

"The Governor-General may appoint any bank or banking institution in the Philippine Islands, and the Secretary of War any similar institution in the United States, as a depositary of the Government of the Philippine Islands, after such institution has filed sufficient evidence of its sound financial condition and has deposited, as security, either in the Insular Treasury or in the Bureau of Insular Affairs, at Washington, bonds of the United States or of the Government of the Philippine Islands or other bonds or securities satisfactory to and approved by the officer making the appointment and in such amount as shall be required by him."

That the enactment of said section was reported to the Congres
the United States, pursuant to the requirement of section 19 of
Act of Congress of August 29, 1916, Ch. 416, 39 Stat. 551, wh
provides that:

30 "All laws enacted by the Philippine Legislature shall be
ported to the Congress of the United States, which reser
the power and authority to annul the same."

That Congress did not annul said enactment and thus taci
approved the same.

That substantially similar provisions to those contained in said s
tion 625 were contained in an enactment of the Philippine Comm
sion of October 12, 1907 (Section 596, Compilation of Acts of t
Philippine Commission). These two provisions were expressly rec
nized and continued in force and effect by section 6 of the said A
of August 29, 1916, 48 U. S. Code, 1004.

Further answering said amended bill of complaint, said defendar
aver that the giving of the said bond by the District National Ban
a copy of which is made Exhibit "C" to the bill of complaint here
and made a part of this answer by reference, and the deposit of t
securities was in accordance with a practice and custom in respect
funds of the Philippine government which has existed and continu
since the year 1908; that during said period, the various Secretari
of War, acting under the provisions of said section 596 enacted Oct
ber 12, 1907 and said section 625, of the Revised Administrati
Code, have from time to time designated certain state and nation
banks within the continental limits of the United States as depos
taries for funds of the Philippine Government and people, the sever
Governors-General of the Philippine Islands have designated th
same banks as branches of the insular Treasury, and the Treasure
of the Philippine Islands have placed and kept on deposit therei
large amounts of the public funds of the People of the Philippi
Islands, for the purpose of maintaining the parity of Philippine bond
notes, coinage and currency; that the total amount of such de
31 posits in the United States formerly approximated $63,000,00
and these deposits were formerly distributed among 39 nationa
banks and 18 state banks.

That each depositary bank was required to deposit, and deposited
with or to the order of the Chief of the Bureau of Insular Affairs
War Department, collateral security of a value equivalent to th
amount of the deposit, in each instance under a formal pledge agree
ment in writing authorizing recourse by the pledgee to the pledge
collateral in the event of a failure to repay the amount of the deposit
that such custom and practice were recognized, well-known, acte
upon and continued without objection, question or challenge for about
twenty-five years and until after the closing of the District National
Bank; that such custom and practice were also known to the respec
tive Comptrollers of the Currency during the said period since its
adoption and up to and subsequent to the sale of the said securities;
that no objection thereto was ever raised or made by any of the said
Comptrollers and said practice and custom aforesaid were recognized
and received and had the approval and sanction of said officials.

Further, that the Comptroller of the Currency was also aware of
and was consulted with, concerning the proposed sale of the said

securities here involved and took no action to prevent it but sanctioned and approved the said sale; that the plaintiff's predecessor, as receiver of the said District National Bank, interposed no objection to said sale and acquiesced therein, after being authorized so to do by the Comptroller of the Currency.

Said defendants further aver that said practice and custom of requiring and receiving security has obtained for many years in respect of deposits of other funds which were under the control of or administered by other departments or agencies, or officers of the
32 United States, or with respect to which such departments, agencies or officers had or performed any duties or functions and such practice and custom continued without objection or question until after the closing of the various banks in which such funds were deposited.

Further answering said amended bill of complaint, these defendants aver that they had no part or participation, either officially or personally in the transactions complained of in said bill; that defendants Woodring and Brown had at no time and do not now have any authority, control or supervision over, or functions in respect of, the said funds deposited in the said Chase National Bank and which it is alleged were in whole or in part transferred and placed in the custody of defendant Henry Morgenthau, Jr.; that defendant Cox, as Chief of the Bureau of Insular Affairs of the War Department, in respect of moneys in the Chase National Bank to the credit of the Treasurer of the Philippine Islands has authority to order the transfer thereof to the United States Treasury or to the Philippine National Bank of New York city, in respect of deposits of moneys made under the said Act of June 11, 1934 (48 Stat. 929) in the United States Treasury and which are deposited to the credit of the Treasurer of the Philippine Islands, said defendant has authority to order the transfer thereof to the said Chase National Bank; except as herein specified, said defendant Cox has no authority, control or supervision over such monies, funds or deposits.

For a further and separate defense, the said defendants say that the plaintiff ought not to have and maintain his suit for the following reasons:

1. The funds sought to be recovered are funds of the Government of the Philippine Islands, and the bond given and the pledge of securities made to insure the deposits made in the District National Bank were given and made to the Government of the Philippine Islands, which is the real party in interest herein.

33 2. The suit in respect of the asserted cause of action affecting these defendants is, in essence, one against the Government of the Philippine Islands, which has not consented to be sued herein.

3. The Government of the Philippine Islands is an indispensable party to this suit, one whose interests are involved and vitally affected by this suit, and in whose absence the Court ought not to proceed.

4. The amended bill of complaint states no cause of action against these defendants or any of them cognizable in equity and sets forth no facts warranting the relief sought against them or any of them.

5. The plaintiff is not entitled to any recovery or relief against these defendants or any of them, since his predecessor as conservator or receiver consented to and acquiesced in the sale of the securities

and voluntarily made the payment set forth in subparagraph 4 of paragraph 8 of the amended bill of complaint; by reason of which plaintiff is estopped from suing or recovering.

6. The plaintiff is not entitled to any recovery or relief against the defendants because of the doctrine in pari delicto, potior est conditio defendentis.

7. The plaintiff is not entitled to any relief or recovery against defendant Harry H. Woodring because he is not properly a party hereto, there being no authority for his substitution as a party defendant in place of George H. Dern, deceased, since the statute under which substitution was granted does not apply to or cover a case such as that presented by the amended bill of complaint.

9. Answering paragraph numbered 9, defendants Harry H. Woodring and H. A. A. Smith admit that the funds and money
34 referred to in paragraph numbered 7, to wit, the so-called Panama Canal funds, are not public funds and are not part of the revenue of the United States; that they are not subject to the control of the Secretary of the Treasury in his official capacity as such Secretary in respect of public moneys of the United States; but in this connection they aver that the interest accruing on said moneys is part of the revenues of the United States; and further that in respect of such of said moneys as were derived from the issuance of Postal Money Orders, they are funds for the payment of which the United States is responsible and obligated.

Said defendants deny that said moneys are not moneys of the Panama Canal, as alleged in said paragraph and on the contrary aver that they are moneys of the said Panama Canal. These defendants admit that the District National Bank was never designated by the Secretary of the Treasury as depository of the Government of the Canal Zone, but say that the Secretary of the Treasury did approve of the depositing in the said District National Bank of moneys of the Panama Canal. Said defendants admit that the Secretary of the Treasury did not exact of the said Bank, the pledge of the securities given to insure the deposits of the Panama Canal funds but they aver that the Secretary of the Treasury was consulted by the Secretary of War in respect of the latter's proposal to require securities for said deposits and approved the same.

Defendant H. A. A. Smith is without knowledge or information concerning the other allegations of fact contained in said paragraph 9 and, therefore, denies them.

Defendants Harry H. Woodring, Creed Fulton Cox, and C. F. Brown, answering in respect of the moneys specified in paragraphs 8 and 8 (a), to wit, the moneys involved in the transactions of
35 the Government of the Philippine Islands, admit that said moneys are not moneys of the United States and are not subject to the control of the Secretary of the Treasury in his official capacity in respect of moneys of the United States; they aver, however, that said moneys are moneys of the Government of the Philippine Islands and that said moneys are deposited with the Secretary of the Treasury as moneys of the Government of the Philippine Islands pursuant to the Act of June 11, 1934, and are held in the Treasury of the United States to the credit and for the account of the Treasurer of the

Philippine Islands and are claimed by said government as a part of its public moneys.

Said defendants admit that the said District National Bank was never designated by the Secretary of the Treasury to receive deposits of the Government of the Philippine Islands and that the Secretary of the Treasury never exacted from said bank the pledge of the securities to secure deposits of the Government of the Philippine Islands; but these defendants aver that the Comptroller of the Currency, a subordinate of the Secretary of the Treasury, knew of said deposits made in said Bank by and on behalf of the Government of the Philippine Islands and that securities to insure the same had been exacted from said Bank and acquiesced in said transactions.

As to the other allegations of fact contained in said paragraph, defendants Creed Fulton Cox and C. F. Brown are without knowledge or information and, therefore, deny the same.

WHEREFORE, having made full answer, all these defendants
36 pray that the said amended bill of complaint be dismissed as to them with costs against the plaintiff.

HARRY H. WOODRING,
Secretary of War.
By MALIN CRAIG,
Acting Secretary of War.
CREED FULTON COX,
Chief of Bureau of Insular Affairs, War Department.
C. F. BROWN,
Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department.
H. A. A. SMITH,
Chief of Office and General Purchasing Officer, Panama Canal.

LESLIE C. GARNETT,
United States Attorney.
H. L. UNDERWOOD,
Assistant United States Attorney.
E. M. CAFFEY,
Captain, Judge Advocate General's Office, War Department.
Attorneys for defendants.

DISTRICT OF COLUMBIA, ss:

Malin Craig, being first duly sworn, deposes and says that he is Acting Secretary of War of the United States, and as such has subscribed to the foregoing answer made on behalf of Harry H. Woodring, Secretary of War, one of the defendants in the above-entitled cause; that he has subscribed to said answer and makes this affidavit and verification on behalf of said defendant, because of the absence of the latter from the District of Columbia; that he has read the foregoing answer by him so subscribed and knows the contents thereof, and that the facts therein stated he verily believes to be true.

MALIN CRAIG.

Subscribed and sworn to before me this 30th day of October 1936.

[SEAL] HERBERT F. STATESIR,
Notary Public, D. C.

My Commission Expires Feb. 1, 1941.

37 DISTRICT OF COLUMBIA, ss:

Creed Fulton Cox, being first duly sworn, deposes and says that he is Chief of Bureau of Insular Affairs, War Department, and as such, named one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts stated therein to be true.

CREED FULTON COX.

Subscribed and sworn to before me this 29th day of October, 1936.

[SEAL] ALFRED H. MORI,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

C. F. Brown, being first duly sworn, deposes and says that he is Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, and as such, named one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts stated therein to be true.

C. F. BROWN.

Subscribed and sworn to before me this 29th day of October, 1936.

[SEAL] ALFRED H. MORI.
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

H. A. A. Smith, being first duly sworn, deposes and says that he is Chief of Office and General Purchasing Officer, Panama Canal, and as such, named one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts stated therein to be true.

H. A. A. SMITH.

Subscribed and sworn to before me this 29th day of October, 1936.

[SEAL] FLOYD B. HEIMER,
Notary Public, D. C.

38 *Motion to strike paragraph 7 and defenses 1 and 2 in answer, etc.*

Filed March 22, 1937

* * * * * * *

Comes now Justus S. Wardell, Receiver of the District National Bank of Washington, plaintiff herein by his attorneys and moves the Court to strike Paragraph 7 and defenses 1 and 2 set forth in the answer of defendants Harry H. Woodring, Secretary of War and H. A. A. Smith, Chief of Office and General Purchasing Officer of Panama Canal, and for the entry of a decree pro confesso for the plaintiff against said defendants, and for reasons therefor states as follows:

1. The said answer does not set up any defenses to the cause of action alleged in plaintiff's amended bill of complaint, and plaintiff is entitled to have said Paragraph 7 and said defenses 1 and 2 stricken, and is entitled to a decree pro confesso against said defendants upon the averments of plaintiff's amended bill of complaint.

2. The pledge of the assets of the District National Bank to secure deposits of the government of the Canal Zone was unauthorized in law, ultra vires the bank, and void; and such pledge constituted an illegal and preferential disposition of the assets of the bank, and the Receiver may recover either the pledged securities or their proceeds without restitution by payment in full of the credit balance on deposits in the bank at suspension.

3. And for the additional reasons and principals of law set forth in the attached memorandum of Points and Authorities in support of this Motion.

BRICE CLAGETT,
CHARLES E. WAINWRIGHT,
Attorneys for Plaintiff.

39 *Memorandum of Court*

Filed July 14, 1937

* * * * * * *

Motion to strike answers of Defendants Woodring and Smith—sustained.

LUHRING, *J.*

40 *Order sustaining motion to strike, etc.*

Filed August 23, 1937

* * * * * * *

This cause having come on for hearing at this term of Court upon the plaintiff's motion to strike paragraph 7 and defenses 1 and 2 of the answer filed by defendants herein and for a decree pro confesso against said defendants, and it appearing to the satisfaction of the Court that said motion should be granted, it is by the Court this 18" day of August, A. D. 1937,

ADJUDGED, ORDERED AND DECREED, that the motion of plaintiff to strike paragraph 7 and separate defenses 1 and 2 of the answer of Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer of Panama Canal, and for a decree pro confesso against said defendants be and said motion is hereby granted; and, the said defendants, Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer of Panama Canal, having elected to stand on their respective answers as filed and having stipulated that a final decree be entered at this time, it is further

ADJUDGED, ORDERED AND DECREED, that the defendants, Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer of Panama Canal, be and they are hereby ordered and directed to pay over to the plaintiff herein the sum of $207,361.41, with interest at the legal rate from September 24, 1933 to September 25, 1933, as of which date a credit and offset of 50% dividend on defendants' provable claims in the sum of $207,361.41 amounting to $103,680.70 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $103,680.71 will be

subject to and will carry interest at the legal rate from Septem-
41 ber 25, 1933 to December 7, 1936, on which date a credit and offset of 25% dividend on defendants' provable general claim in the sum of $207,361.41 amounting to $51,840.35 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $51,840.36 will be subject to and will carry interest at the legal rate from December 7, 1936 until paid; and it is further

ADJUDGED, ORDERED AND DECREED, that the defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer of Panama Canal, are entitled to file a claim against the Receiver of the District National Bank of Washington and to receive such further dividends thereon as are paid to unsecured depositors and other general creditors of said bank; and it is further

ADJUDGED, ORDERED AND DECREED, that execution may issue against the defendants upon the judgment herein awarded.

O. R. LUHRING, *Justice.*

The defendants, by their attorneys, object and except to the entry of the above order and decree of the Court, which objection and exception is hereby allowed by the Court, and an appeal is noted in open court to the United States Court of Appeals for the District of Columbia which appeal is hereby allowed by the Court.

O. R. LUHRING, *Justice.*

No objection to the form. The defendants consent to the entry of a final decree herein in place of a decree pro confesso.

H. L. UNDERWOOD,
Assistant United States Attorney.

42 *Assignment of errors of Defendants Woodring and Smith*

Filed September 1, 1937

* * * * * * *

(1) The Court erred in holding and determining that there was no authority for the pledging by the District National Bank of the securities involved to safeguard the deposits of the funds of the Panama Canal and in not holding and determining that such authority existed.

(2) The Court erred in not holding and determining that the giving of the securities by the District National Bank was warranted by custom and usage long established, well recognized and unquestioned for many years, and also sanctioned by the Secretary of the Treasury and the Comptroller of the Currency.

(3) The Court erred in not holding and determining that the plaintiff was estopped from bringing and maintaining this suit by the action of his predecessor, the Conservator of the said bank, approved by the Comptroller of the Currency, in agreeing to the sale of the securities and the setting up in the Hamilton National Bank of the credit account in the name of the Secretary of War.

(4) The Court erred in not holding and determining that the United States is an indispensable party to this suit insofar as the funds of the Panama Canal are concerned.

(5) The Court erred in not holding and determining that the answer of these defendants constituted a complete defense to the suit against them; and in not overruling plaintiff's motion to strike and for a decree pro confesso.

(6) The Court erred in sustaining the plaintiff's motion to strike and for a decree pro confesso.

43 (7) The Court erred in entering a decree against these defendants.

LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for said defendants.

Service of a copy hereof is hereby acknowledged this 1st day of September 1937.

BRICE CLAGETT,
CHARLES E. WAINWRIGHT,
Attorneys for Plaintiff.

Designation of record

Filed September 1, 1937

* * * * * * *

The Clerk will please prepare the record on appeal herein, including therein the following:

(1) Amended Bill of Complaint with Exhibits "A" and "B."

(2) Answer of defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office, Panama Canal, to Amended Bill of Complaint.

(3) Motion of plaintiff to strike portions of the answer of these defendants and for a decree pro confesso.

(4) Memorandum of Court sustaining motion.

(5) Final decree against these defendants.

(6) Notation of appeal.

(7) Assignment of Error.

44 (8) This designation.

LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office, Panama Canal.

Service of a copy of this Designation is hereby acknowledged this 1st day of September, 1937.

BRICE CLAGETT,
CHARLES E. WAINWRIGHT,
Attorneys for Plaintiff.

45 District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, CHARLES E. STEWART, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 44, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 59007 in Equity, wherein Norman R. Hamilton, Receiver, District National Bank of Washington, a Corporation, is Plaintiff, and George H. Dern, Secretary of War, et al., are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District this 22nd day of October, 1937.

[SEAL] C. E. STEWART, *Clerk.*

No. 7055. Woodring, Sec'y. of War, et al., Appellants, vs. Wardell, Receiver. United States Court of Appeals for the District of Columbia. Filed Oct. 26, 1937. Moncure Burke, Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1937

Thursday, May 12th, A. D. 1938

* * * * * * *

No. 7055

HARRY H. WOODRING, SECRETARY OF WAR, AND H. A. A. SMITH, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, PANAMA CANAL, APPELLANTS

vs.

JUSTUS S. WARDELL, RECEIVER, DISTRICT NATIONAL BANK OF WASHINGTON, D. C.

The argument in the above entitled cause was commenced by Mr. Leslie C. Garnett, attorney for appellants, and was continued by Mr. Brice Clagett, attorney for appellee. (Mr. Justice Stephens and Mr. Justice Edgerton not sitting.)

* * * * * * *

Friday, May 13th, A. D. 1938

The argument in the above entitled cause was concluded by Mr. Brice Clagett, attorney for appellee. (Mr. Justice Stephens and Mr. Justice Edgerton not sitting.)

* * * * * * *

United States Court of Appeals for the District of Columbia

No. 7055

HARRY H. WOODRING, SECRETARY OF WAR, AND H. A. A. SMITH, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, PANAMA CANAL, APPELLANTS

v.

JUSTUS S. WARDELL, RECEIVER, DISTRICT NATIONAL BANK OF WASHINGTON, D. C., APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Decided October 31, 1938

Leslie C. Garnett, Special Assistant to the Attorney General, David A. Pine, United States Attorney, and H. L. Underwood, Assistant United States Attorney, all of Washington, D. C., for appellants.

George P. Barse and Brice Clagett, both of Washington, D. C., for appellee.

Before GRONER, C. J., and MILLER and VINSON, JJ.

GRONER, C. J.: This is an appeal from a decree against appellants directing payment of the proceeds of certain bonds of the insolvent District National Bank which had been pledged by the bank to secure deposits of Canal Zone money-order funds. The bill alleges that the pledge was invalid, that the sale of the bonds and collection of the proceeds were illegal, and that such proceeds are a trust fund for the benefit of the creditors of the bank and as such recoverable from the defendants.

The answer asserts that the pledge was valid and that the bonds were lawfully in the possession of the Secretary of War.

The material facts shown here are in all respects identical with those in No. 7056, Inland Waterways Corp., et al. v. Hardee, Receiver (decided today), — F. 2d. —, and the disposition of that case controls this.

Affirmed.

Monday, October 31st, A. D. 1938

* * * * * * *

No. 7055. October Term, 1938

HARRY H. WOODRING, SECRETARY OF WAR, AND H. A. A. SMITH, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, PANAMA CANAL, APPELLANTS

vs.

JUSTUS S. WARDELL, RECEIVER, DISTRICT NATIONAL BANK OF WASHINGTON, D. C.

Appeal from the District Court of the United States for the District of Columbia. This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Per Mr. Chief Justice Groner, October 31, 1938.

* * * * * * *

Designation of record

The Clerk will please prepare the transcript of record in connection with the application of Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office, Panama Canal, to the Supreme Court of the United States for a writ of certiorari in the above-entitled case, and include in the same the following:

1. The printed record of the proceedings in the lower court as filed in the Court of Appeals.

2. Minute entry showing argument of cause.
3. Opinion of the court.
4. Judgment of the court.
5. This designation.
6. The Clerk's certificate.

Filed Jan. 23, 1939.

ROBERT H. JACKSON,
Solicitor General; Counsel for Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office, Panama Canal.

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 31, inclusive, constitute a true copy of the transcript of record and proceedings as designated by counsel in the case of: Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office, Panama Canal, appellants vs. Justus S. Wardell, Receiver, District National Bank of Washington, D. C. No. 7055. October Term, 1938, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this Twenty-fourth day of January, A. D. 1939.

[SEAL] JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 1939

Supreme Court of the United States

Order allowing certiorari

Filed March 13, 1939

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE 1939